

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 1/14/04      Item: 3.a.

File Number  
CP03-066

Application Type  
Conditional Use Permit

Council District  
1

Planning Area  
West Valley

Assessor's Parcel Number(s)  
299-14-025

### PROJECT DESCRIPTION

Completed by: Darren McBain

Location: South side of De Mille Drive approximately 150 feet easterly of Saratoga Avenue (4180 De Mille Drive)

Gross Acreage: 0.24

Net Acreage: 0.24

Net Density: n/a

Existing Zoning: CP Commercial Pedestrian

Existing Use: Commercial building

Proposed Zoning: No change

Proposed Use: Sale of alcoholic beverages for off-site consumption

### GENERAL PLAN

Completed by: DM

Land Use/Transportation Diagram Designation  
Medium Low Density Residential (8 DU/AC)

Project Conformance:  
☒ Yes    ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: DM

North: Commercial

CP Commercial Pedestrian

East: Single-family detached residential

R-1-8 Residence

South: Single-family detached residential

R-1-8 Residence

West: Commercial

CP Commercial Pedestrian

### ENVIRONMENTAL STATUS

Completed by: DM

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: DM

Annexation Title: Moreland #33

Date: 6/16/1966

---

---

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DM

Department of Public Works

None Received

Other Departments and Agencies

See attached e-mail message.

---

---

GENERAL CORRESPONDENCE

None received

---

---

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Natalia Napady, is requesting a Conditional Use Permit (CUP) to allow sales of alcoholic beverages for off-site consumption at an existing commercial tenant space located at 4180 De Mille Drive, in the CP Commercial Pedestrian Zoning District. The Zoning Ordinance requires a CUP for off-sale of alcoholic beverages in the CP Commercial Pedestrian Zoning District. The California State Department of Alcoholic Beverage Control (ABC) and the San José Police Department have determined that a Liquor License Exception Permit is not required for this location; see Analysis section, below. However, the applicant will be required to obtain a Liquor License from the State prior to commencing operation of the business.

The proposed use is to be located in a tenant space in a small existing strip mall that is primarily oriented towards Saratoga Avenue. Other nearby development includes commercial buildings to the north and west, and single-family residences to the east and south of this tenant space. This tenant space was previously used as a pizza restaurant.

**Project Description**

The applicant's stated intention is to sell beer and wine as part of a small European specialty-oriented grocery store. The retail sale of grocery items is allowed by right in the CP Commercial Pedestrian

leasing, etc. of existing private structures with no significant expansion of use. The proposed use is for a tenant space in an existing commercial building. It is staff's opinion that the proposal adequately conforms to this section of the CEQA Guidelines.

## **GENERAL PLAN CONFORMANCE**

The majority of this existing retail center has a General Plan Land Use/Transportation Diagram designation of General Commercial, however the portion which includes the subject tenant space has a designation of Medium Low Density Residential (8 DU/AC). However, the General Plan states "any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated". For the purpose of the General Plan, a developed parcel is defined as one which has an existing urban development or uses. The parcel in question is less than two acres and is developed with an existing commercial building that would continue to be used under this proposal. Therefore, the proposal is deemed to be in conformance with the General Plan.

## **ANALYSIS**

The key issues analyzed for the proposed project include: 1) conformance to the Zoning Ordinance regulations related to the off-sale of alcoholic beverages, and 2) neighborhood compatibility. As described in greater detail below, it is staff's opinion that the proposed project adequately conforms to the criteria related to these issues.

### Conformance to the Zoning Ordinance

The project includes off-sale of alcoholic beverages (i.e., the sale to consumers of alcoholic beverages in original, unopened packages for consumption off the premises where sold). The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CP Commercial Pedestrian Zoning District. In accordance with Section 20.80.900, the Planning Commission may issue a Conditional Use Permit for off-sale of alcoholic beverages only upon making the following findings, where applicable:

1. *For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.*

The proposed use is not located within 500 feet of any other off-sale premises.

2. *For such a use at a location closer than 500 feet from any child care center, elementary school,*

undue concentration within the census tract . An Exception is also required when the Police service investigative information (including, but not limited to, site-specific neighborhood analysis of calls for service) indicates that the “Police beat” area in which the premises is located has had an unusually high number of service calls for certain types of crimes. Neither of these conditions is applicable to the current proposal. The attached memo from the Police Department Vice Unit indicates that an Exception is not required.

#### Neighborhood Compatibility

The proposed business is a specialty food store and is expected to function much like any other retail-type commercial land use that has taken place on the site for the past several decades. It is Planning staff’s opinion that the proposed land use is not likely to generate any adverse impacts on the nearby residences or the adjacent commercial land uses.

Although the proposed CUP is anticipated to include retail specialty food sales with beer and wine, it should be noted that the CUP process and entitlements allow the off-sale of alcoholic beverages “categorically,” and are not limited to what the applicant is currently proposing. The approval “runs” permanently with the premises and does not, for example, differentiate between a specialty grocery-type business and a business that is more like a convenience store or liquor store. Therefore, while staff does not anticipate this will be the case, the applicant or another subsequent tenant could conceivably expand the retail liquor sale aspect of the business operations at this premises to operate more like a liquor store rather than a specialty deli, without need of further Planning approval or additional permits, though a new ABC liquor license may be required under such circumstances.

An e-mail message dated December 4, 2003 from Office Dave Kirkendall of the San José Police Department’s Vice Unit states that the subject site is not in a crime-impacted area and that the SJPD has no objections to the proposed project.

#### **Conclusion**

The proposal conforms to the requirements of the Zoning Ordinance. The building in which the proposed use is to be located is situated such that business activities associated with this proposal would not adversely affect the nearby residences or other nearby land uses. The off-sale of alcohol at this location is not expected to prove detrimental to the neighborhood.

#### **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional

4. The project proposes the sale of alcoholic beverages for off-site consumption.
5. The Zoning Ordinance requires a Conditional Use Permit for the sale of alcoholic beverages for off-site consumption in the CP Commercial Pedestrian Zoning District.
6. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by San José Municipal Code Sections 20.80.900 and 20.100.720.
7. The proposed use is not located within 500 feet of another establishment that sells alcoholic beverages for off-sale consumption.
8. The proposed use is not located within 500 feet of a licensed childcare center or school.
9. The project site is located within census tract 5063.05.
10. The subject site is not located in one of the census tracts identified by the City Council as problematic areas for such uses.
11. The Police Department Special Investigation/Vice unit has confirmed that the site is not located in an area with an over-20% crime index.
12. An e-mail message dated December 4, 2003 from Office Dave Kirkendall of the San José Police Department's Vice Unit states that the subject site is not in a crime-impacted area and that the SJPD has no objections to the proposed project.
13. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José, in that the site is less than two acres and is developed with an urban use.

- the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect, and the subject property shall not be used for the hereby permitted uses, unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption.
7. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall obtain all necessary permits maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit/Liquor License Exception Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the

- a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

Attachments:

 Police memo